

United States  
Circuit Court of Appeals  
For the Ninth Circuit. 10

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WILLIAM A. SHERMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record.

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Upon Appeal from the United States District Court for the  
Northern District of California, Southern Division.

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FILED  
AUG 21 1900  
PAUL F. CURRIE,  
CLERK



# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
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GEO. J. HATFIELD, Esq., United States Attorney,  
Post Office Building, San Francisco, California,  
Attorney for Appellee.

LEON MORRIS, Esq., Crocker 1st National Bank  
Building, San Francisco, California,  
Attorney for Appellants.

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In the District Court of the United States, for the  
Northern District of California, Second Division.

No. 17,612.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

WILLIAM A. SHERMAN, M. F. COCHRANE  
and J. B. SANFORD, Constituting the  
Board of State Harbor Commissioners of  
the State of California, Operating the State  
Belt Railroad,  
Defendants.

COMPLAINT.

Now comes the United States of America, by  
Geo. J. Hatfield, United States Attorney for the  
Northern District of California and brings this  
action on behalf of the United States against *the*  
William A. Sherman, M. F. Cochrane, and J. B.

Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad, and having an office and place of business at San Francisco in the State of California; this action being brought upon suggestion of the Attorney General of the United State at the request of the Interstate Commerce Commission; and upon information furnished by said Commission.

#### FOR A FIRST CAUSE OF ACTION

plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), [1\*] and as amended by an Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), defendant, on July 22, 1926, hauled on its line of railroad one car, to wit: A. T. & S. F. box No. 25403, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date defendant hauled said car as aforesaid over its line of railroad in and about San Francisco, in the State of California, within the jurisdiction of this court,

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\*Page-number appearing at the foot of page of original certified Transcript of Record.

when the coupling and uncoupling apparatus on the "A" end of said car was out of repair and inoperative, the uncoupling lever being disconnected from lock block of coupler on said end of said car, thus necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

#### FOR A SECOND CAUSE OF ACTION

plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by an Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), defendant, on July 24, 1926, hauled on its line of railroad one car, to wit: N. W. P. box No. 2013, over a part of a highway of interstate commerce. [2]

Plaintiff further alleges that on said date defendant hauled said car as aforesaid over its line of railroad in and about San Francisco, in the State of California, within the jurisdiction of this court, when the coupling and uncoupling apparatus on the "B" end of said car was out of repair and inoperative, the uncoupling lever being disconnected from lock block of coupler on said end of said car, thus necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

#### FOR A THIRD CAUSE OF ACTION

plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at



Large, page 85), and as amended by an Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), defendant, on July 27, 1926, hauled on its line of railroad one car, to wit: N. W. P. gondola No. 4723, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date defendant hauled said car as aforesaid over its line of railroad, in and about San Francisco, in the State of California, within the jurisdiction of this court, when the coupling and uncoupling apparatus on the "B" [3] end of said car was out of repair and inoperative, the uncoupling lever being disconnected from lock block of coupler on said end of said car, thus necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

WHEREFORE, plaintiff prays judgment against said defendant in the sum of Three Hundred Dollars and its costs herein expended.

GEORGE J. HATFIELD,

United States Attorney.

In this cause the defendants William A. Sherman, M. F. Cochrane and J. B. Sanford, etc., having been regularly served with process, as appears from the record and papers on file herein, and having failed to plead, answer or demur to plaintiff's complaint, within the time allowed by law, and the time for pleading, answering and demurring having expired;

Now, upon application of George J. Hatfield, U. S. Atty., attorney for plaintiff, the default of the defendants William A. Sherman, M. F. Cochrane & J. B. Sanford, etc., is hereby entered herein, according to law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of the District Court of the United States for the Northern District of California, this 17th day of June, A. D. 1927.

WALTER B. MALING,

Clerk.

By Harry L. Fouts,

Deputy Clerk.

[Endorsed]: Filed Sep. 8, 1926. [4]

SUMMONS.

UNITED STATES OF AMERICA,

District Court of the United States, Northern District of California, Second Division.

Action brought in said District Court and the complaint filed in the office of the Clerk of said District Court, in the City and County of San Francisco.

GEORGE J. HATFIELD,  
U. S. Attorney,  
Plaintiff's Attorney.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

WILLIAM A. SHERMAN et al., etc.,  
Defendants.

The President of the United States of America,  
GREETING: To William A. Sherman, M. F. Cochrane and J. B. Sanford, Constituting the Board of State Harbor Commissioners of the State of California, Operating the State Belt Railroad, Defendants.

YOU ARE HEREBY DIRECTED TO APPEAR AND ANSWER the complaint in an action entitled as above, brought against you in the District Court of the United States, in and for the Northern District of California, Second Division, within ten days after the service on you of this

summons, if served within this county, or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required the said plaintiff will take judgment for any money or damages demanded in the complaint, as arising upon contract or it will apply to the Court for any other relief demanded in the complaint.

WITNESS the Honorable FRANK H. KERRIGAN, Judge of said District Court, this 8th day of September, in the year of our Lord one thousand nine hundred and twenty-six and of our Independence the one hundred and *151st*.

[Seal

WALTER B. MALING,

Clerk.

By \_\_\_\_\_,

Deputy Clerk.

United States Marshal's Office,  
Northern District of California.

I HEREBY CERTIFY that I received the within writ on the 8th day of Sept., 1926, and personally served the same on the 14th day of Sept., 1926, upon Board of State Harbor Commissioners by delivering to, and leaving with James Byrne Jr., who is the Secretary of the Board of State Harbor Commissioners said defendant named therein personally, at the city and county of San Francisco, in said district a certified copy thereof, together with a copy of the complaint, attached thereto.

San Francisco, September 15th, 1926.

FRED L. ESOLA,

U. S. Marshal.

By Geo. H. Burnham,

Office Deputy.

[Endorsed] Filed September 15th, 1926. [5]

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In the Southern Division of the United States District Court, in and for the Northern District of California, Second Division.

No. 17,612.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM A. SHERMAN, M. F. COCHRANE,  
and J. B. SANFORD, Constituting the  
Board of State Harbor Commissioners of the  
State of California, Operating the State Belt  
Railroad,

Defendants.

### JUDGMENT ON DEFAULT.

In this cause the defendant, William A. Sherman, M. F. Cochrane and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad, having failed to plead, answer or demur to the complaint herein after the denial of defendants' motion to dismiss the complaint, within the time allowed by law and order of the Court, and the de-

fault of said defendants having been duly entered, and the Court having, upon motion of Chellis M. Carpenter, Assistant United States Attorney, counsel for plaintiff herein, ordered that judgment be entered herein in accordance with the prayer of the complaint:

NOW, THEREFORE, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that the United States of America, plaintiff, do have and recover of and from William A. Sherman, M. F. Cochrane and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad, [6] defendants, the sum of three hundred and 00/100 (\$300.00) dollars, together with its costs herein expended taxed at \$15.60.

Judgment entered June 28, 1927.

WALTER B. MALING,

Clerk. [7]

[Title of Court and Cause.]

BILL OF EXCEPTIONS OF DEFENDANT  
WILLIAM A. SHERMAN ON APPEAL  
FROM ORDER DENYING HIS MOTION  
TO WITHDRAW, RECALL AND QUASH  
THE ALIAS EXECUTION ISSUED IN  
THE ABOVE-ENTITLED ACTION OUT  
OF THE ABOVE-ENTITLED COURT ON  
MAY 2, 1929, AND THE LEVY MADE PUR-  
SUANT THERETO UPON CERTAIN  
PROPERTY OF SAID DEFENDANT, IN-  
DIVIDUALLY.

BE IT REMEMBERED that the above-entitled action was commenced on or about September 8th, 1926, by the filing of a complaint in the above-entitled court and the issuance of a summons; that said complaint was filed by The United States of America, Plaintiff, against William A. Sherman, M. F. Cochrane and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad, Defendants, for the purpose of recovering fines or penalties claimed to be due for alleged violations of the Act of Congress known as the "Federal Safety Appliance Act" by defendant as a common carrier engaged in interstate commerce by railroad in the State of California, and in connection with the operation of said State Belt Railroad; that thereafter, and after proceedings duly had and taken, and on or about the 28th day of June, 1927, judg-

ment was entered in said action in [8] favor of plaintiff and against defendants William A. Sherman, M. F. Cochrane and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad, for the sum of three hundred (\$300.00) dollars, together with costs of suit.

That thereafter, and on or about the 2d day of May, 1929, an alias execution was issued in the above-entitled action out of the above-entitled court on the said judgment, and to the Marshal of the United States of America for the Northern District of California; that said execution was and is in the words and figures following, to wit:

(Title of Court and Cause.)

#### ALIAS EXECUTION.

The President of the United States of America to  
the Marshal of the United States of America  
for the Northern District of California—  
GREETING:

WHEREAS, on the 28th day of June, A. D. 1927, United States of America recovered a judgment in the District Court of the United States, in and for the Northern District of California, Southern Division, against William A. Sherman, M. F. Cochrane, and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad, for the sum of three hundred and 00/100 (\$300.00) dollars, damages, and fifteen and 60/100 (\$15.60) dollars, costs, together with interest thereon at the rate of seven



per cent per annum, from the date of said judgment until paid, as appears to us of record;

AND WHEREAS, the judgment-roll in the action in which said judgment was entered is filed in the Clerk's office of said court, and the said judgment was docketed in said Clerk's office on the day and year first above written; [9]

AND WHEREAS, the sum of Three Hundred Fifty and 60/100 (\$315.60) Dollars, with interest thereon at the rate of seven per cent per annum, from the date of said judgment, is now (at the date of this writ) actually due on said judgment, together with the sum of — dollars, accruing costs, also percentage at the rate of one per cent upon the amount found due on the date of satisfaction of this writ;

Now, you, the said Marshal, are hereby required to make the said sums due on said judgment, with interest as aforesaid, costs, accruing costs, and percentage to satisfy the said judgment, out of the personal property of said debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your District belonging to said debtor on the day whereon said judgment was docketed, or at any time thereafter; and that you have said money in said court, and return this writ within 60 days after your receipt hereof, with what you have done indorsed hereon.

WITNESS, the Honorable A. F. ST. SURE, Judge of the District Court of the United States, Northern District of California this second day of May, A. D. 1929, and of our Independence the 153d.

Attest my hand and the seal of said District Court the day and year last above written.

WALTER B. MALING,

Clerk.

By A. C. Aurich,

Deputy Clerk.

STATEMENT.

Judgment .....	\$300.00
Costs and Disbursements .....	15.60
.....	\$
Accrued costs .....	\$
Interest .....	\$ 40.25
Clerk's percentage .....	\$ 3.55
Marshal' fee .....	\$ 4.60
	<hr/>
Total, .....	\$364.00

[10]

That thereafter, and on or about the 17th day of May, 1929, the said Marshal of the United States of America for the Northern District of California, levied said Writ of Execution upon certain property belonging to defendant William A. Sherman, individually, to wit, all rights and/or shares which defendant William A. Sherman has in the capital stock of the Merchants Ice and Cold Storage Company, San Francisco, California, and all credits and other personal property belonging to said defendant William A. Sherman, in the hands or under the control of said Merchants Ice and Cold Storage Company at San Francisco, California; that on said 17th day of May, 1929, a notice of such

levy was duly served by the said United States Marshal on said Merchants Ice and Cold Storage Company; that said notice was and is in the words and figures following, to wit:

NOTICE OF LEVY.

United States of America,  
Northern District of California,—ss.

UNITED STATES MARSHAL'S OFFICE,  
San Francisco, California.

May 17th, 1929.

Merchants Ice and Cold Storage Company,  
Battery and Lombard Streets,  
San Francisco, Calif.

Gentlemen: You will please take notice that all rights and/or shares which the defendant William A. Sherman, has in the Capital Stock of the Merchants Ice and Cold Storage Company at Battery and Lombard Streets in San Francisco, California, and any and all credits and other personal property belonging to said defendant William A. Sherman and particularly any and all money, debts, credits and effects in the hands, or under the control of the Merchants Ice and Cold Storage Company of San Francisco, California, or the agents [11] of said corporation, belonging to or due to said William A. Sherman are attached by virtue of a writ of execution of which a copy is hereto attached, and you are notified not to pay over or transfer the same to anyone but myself or some one legally authorized to receive the same, but conduct yourself in accordance with the Statutes made and provided.

I also require of you a statement in writing as to the amount and description of each such debt, credit, effect, amount of money and/or other personal property.

FRED L. ESOLA,

U. S. Marshal.

By Harold Friedenbergl,

Deputy.

That thereafter and on or about the 10th day of June, 1929, said defendant William A. Sherman, individually, served, and filed in the above-entitled court, his motion for an order withdrawing, recalling and quashing the said alias execution issued in the above-entitled action out of the above-entitled court on May 2, 1929, and the levy made pursuant thereto upon said property of said defendant; that said motion was and is in the words and figures following, to wit:

(Title of Court and Cause.)

MOTION BY DEFENDANT WILLIAM A. SHERMAN, INDIVIDUALLY FOR AN ORDER WITHDRAWING, RECALLING AND QUASHING THE ALIAS EXECUTION ISSUED IN THE ABOVE-ENTITLED ACTION OUT OF THE ABOVE-ENTITLED COURT ON MAY 2, 1929, AND THE LEVY MADE PURSUANT THERETO UPON CERTAIN PROPERTY OF THIS DEFENDANT.

Comes now William A. Sherman, one of the de-

defendants herein, and moves the above-entitled court for an order withdrawing, recalling and quashing the alias execution issued in the above-entitled action out of the above-entitled court on May 2, 1929, and the levy made pursuant thereto upon certain property of this defendant, individually, [12] upon the following grounds:

I.

That there is a variance between the said alias execution and the levy made thereunder and the judgment in the above-entitled action in that said judgment was and is entered against William A. Sherman, M. F. Cochrane and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad, and as such, is a judgment against said defendants in their official capacity, whereas said alias execution has been levied upon certain property of defendant William A. Sherman, individually, to wit, certain capital stock of the Merchants Ice and Cold Storage Company, and other personal property belonging to defendant William A. Sherman, under the control of said Merchants Ice and Cold Storage Company.

That a copy of said alias execution is attached hereto, marked Exhibit "A," hereby referred to, and by such reference made a part hereof, and that a copy of the notice of the levy of such alias execution addressed to said Merchants Ice and Cold Storage Company and signed by the United States Marshal is attached hereto, marked Exhibit "B,"

hereby referred to, and by such reference made a part hereof.

## II.

That the above-entitled action was commenced by a complaint filed on September 8th, 1926, by the United States Attorney at the request of the Interstate Commerce Commission on behalf of the United States of America against William A. Sherman, M. F. Cochrane and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad.

That the causes of action set forth in said complaint were based upon alleged violations of the Federal Safety Appliance Act [13] in connection with the operation of the State Belt Railroad, occurring on July 22d, 1926, July 24th, 1926, and July 27th, 1926.

That at said times, defendant William A. Sherman was a member of said Board of State Harbor Commissioners.

That thereafter, and on or about July 28th, 1927, judgment was entered in the above-entitled action against defendants William A. Sherman, M. F. Cochrane and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad for the sum of three hundred (\$300.00) dollars, and costs amounting to the sum of fifteen and 60/100 (\$15.60) dollars.

That this defendant William A. Sherman was succeeded in office as such member of the Board of State Harbor Commissioners of the State of Cali-

ifornia by Charles L. Tilden, on or about the 15th day of February, 1927, and that this defendant has not been since said time and is not now a member of said Board of State Harbor Commissioners.

That the complaint in the above-entitled action and all pleadings therein and the judgment in the above-entitled action were and are against the defendants William A. Sherman, M. F. Cochrane and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad, and that said judgment was and is a judgment against said defendants in their official capacity and cannot be enforced against them in their individual capacity.

That an alias execution was issued in the above-entitled action and out of the above-entitled court on May 2d, 1929; that a copy of said alias execution is attached hereto, marked Exhibit "A," and hereby referred to and made a part hereof as aforesaid, and that claiming to act pursuant thereto, the said United States Marshal for the Northern District of California did levy upon certain personal [14] property belonging to defendant William A. Sherman, individually as more specifically appears from the said notice of levy, a copy of which is attached hereto, marked Exhibit "B" and hereby referred to and made a part hereof as aforesaid.

That said levy is at variance with the said alias execution and said judgment and is without right and contrary to the provisions of law applicable to the levy of executions upon judgments against persons in their official capacity.

That unless said alias execution and said levy are withdrawn, recalled and quashed, said United States Marshal will proceed to sell said personal property of this defendant William A. Sherman, or as much thereof as may be necessary to satisfy said judgment, to the irreparable injury of this defendant William A. Sherman.

### III.

That the Federal Safety Appliance Act upon which the above-entitled action and said judgment are based, assesses a penalty for the violations thereof complained of in the complaint in the above-entitled action against a common carrier.

That defendant William A. Sherman in his individual capacity, is not now, was not at the times in said complaint mentioned, and never has been a common carrier.

That defendants William A. Sherman, M. F. Cochrane and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operated the State Belt Railroad in their official capacity as such Board of State Harbor Commissioners, and if the said State Belt Railroad was a common carrier, the said common carrier was and is the State of California.

That the judgment in the above-entitled action was and is a judgment against defendants in their official capacity, and that the cause of action stated against defendants in the complaint in the above-entitled action was and is a cause of action against them [15] in their official capacity; that a cause of action could not have been stated against defend-



ants in their individual capacity by reason of the violations of the Federal Safety Appliance Act alleged in plaintiff's complaint.

That the said judgment in the above-entitled action can only be enforced against defendants in their official capacity, and not in their individual capacity.

#### IV.

That there is a variance between said alias execution and the judgment in the above-entitled action in that said judgment was and is for the sum of three hundred (\$300.00) dollars and costs; that said costs amounted to the sum of fifteen and 60/100 (\$15.60) dollars, and that there was due under said judgment at the date of the issuance of said alias execution, the said sum of three hundred (\$300.00) dollars and costs in the sum of fifteen and 60/100 (\$15.60) dollars, making a total of three hundred and fifteen and 60/100 (\$315.60) dollars, but said alias execution, on the contrary, recites in the written statement of the amount due at the date of the issuance thereof, that said sum so due was three hundred fifty and 60/100, with interest (although the figures \$315.60 were added), and that said alias execution, therefore, is for a greater amount than that for which judgment was rendered.

#### V.

That said alias execution and the said levy made pursuant thereto, were and are and each of them was and is, wrongfully, unlawfully and improperly issued and levied against and upon the property of

defendant William A. Sherman personally and individually.

## VI.

That an execution cannot be issued against the State of California, and cannot be levied upon any property of the State of California. [16]

This motion to withdraw, recall and quash the alias execution issued in the above-entitled action out of the above-entitled court on May 2, 1929, and the levy made pursuant thereto upon certain property of this defendant is made and based upon all the pleadings, papers, records and proceedings now on file in the above-entitled action, and the said alias execution and notice attached thereto, copies of which are attached hereto and marked Exhibits "A" and "B" as aforesaid, and such papers, records and proceedings as may be on file in the above-entitled action at the time of the hearing of this motion, and upon the affidavit of William A. Sherman to be filed herein, which affidavit is hereby referred to and by such reference made a part hereof, and upon such evidence both oral and documentary as may be offered at the hearing of said motion.

WHEREFORE, this defendant William A. Sherman, prays that this Court make its order withdrawing, recalling and quashing the alias execution issued in the above-entitled action out of the above-entitled court on May 2, 1929, and the levy made pursuant thereto upon the property of this defendant.

Dated: this 10th day of June, 1929.

LEON E. MORRIS,

Attorney for Defendant William A. Sherman.

That with said motion, said defendant William A. Sherman served and filed a notice of motion noticing the hearing of said motion for Monday, the 17th day of June, 1929, at the hour of ten o'clock A. M. in the courtroom of the above-entitled court; that said notice of motion was and is in words and figures as follows, to wit: [17]

(Title of Court and Cause.)

NOTICE OF MOTION BY DEFENDANT  
WILLIAM A. SHERMAN, INDIVIDU-  
ALLY, FOR AN ORDER WITHDRAWING,  
RECALLING AND QUASHING THE  
ALIAS EXECUTION ISSUED IN THE  
ABOVE-ENTITLED ACTION OUT OF  
THE ABOVE-ENTITLED COURT ON  
MAY 2, 1929, AND THE LEVY MADE  
PURSUANT THERETO UPON CERTAIN  
PROPERTY OF THIS DEFENDANT.

To the United States of America, Plaintiff Above  
Named, and to GEORGE J. HATFIELD,  
United States Attorney:

YOU AND EACH OF YOU WILL PLEASE  
TAKE NOTICE and you are hereby notified that  
defendant William A. Sherman herewith serves  
upon you and will file herewith ... the above-entitled  
action, his attached motion for an order withdraw-  
ing, recalling and quashing the alias execution is-

sued in the above-entitled action out of the above-entitled court on May 2, 1929, and the levy made pursuant thereto upon certain property of this defendant; that said motion is hereby referred to and by such reference made a part hereof.

You and each of you are further notified that said defendant will, on Monday, the 17th day of June, 1929, at the hour of ten o'clock A. M. of said day, or as soon thereafter as counsel may be heard, in the courtroom of the above-entitled court, room No. 304, in the Post Office Building on the corner of Seventh and Mission Streets in the city and county of San Francisco, State of California, call for hearing his said motion, and will then and there present and make the same upon all the grounds and upon the papers and evidence mentioned and specified in said motion.

Dated: this 10th day of June, 1929.

LEON E. MORRIS,

Attorney for Defendant William A. Sherman.

That with said motion and notice of motion, said defendant served and filed his affidavit in support thereof; that said affidavit was and is in the words and figures following, to wit: [18]

(Title of Court and Cause.)

AFFIDAVIT OF WILLIAM A. SHERMAN IN  
SUPPORT OF MOTION FOR AN OR-  
DER WITHDRAWING, RECALLING AND  
QUASHING ALIAS EXECUTION AND  
LEVY MADE PURSUANT THERETO.

State of California,

City and County of San Francisco,—ss.

William A. Sherman, being first duly sworn, de-  
poses and says:

That he is one of the defendants named in the  
above-entitled action, and is the defendant who has  
filed herewith his motion for an order withdrawing,  
recalling and quashing the alias execution issued  
in the above-entitled action out of the above-en-  
titled court on May 2, 1929, and the levy made pur-  
suant thereto upon certain of his property.

That he has read the motion for said order filed  
herewith and that the facts therein stated are true  
of his own knowledge.

That affiant was a member of the Board of State  
Harbor Commissioners of the State of California  
in the month of July, 1926, and at all times there-  
after to and including about the 15th day of Feb-  
ruary, 1927; that affiant was succeeded in office as  
such member of the Board of State Harbor Com-  
missioners of the State of California by Charles L.  
Tilden on or about the 15th day of February, 1927,  
and has not been since said time and is not now a  
member of said Board of State Harbor Commis-  
sioners.

That the alias execution issued in the above-entitled action out of the above-entitled court, a copy of which is attached to said motion, marked Exhibit "A" and by reference made a part thereof, was levied upon certain personal property belonging to this defendant, individually; that said property is more particularly described in that certain Notice addressed to the Merchants Ice and Cold Storage Company, San Francisco, California, a copy of which [19] is attached to said motion and marked Exhibit "B" and by reference made a part thereof, and is hereby referred to and by such reference made a part hereof with the same force and effect as if set forth in full herein; that all of the property mentioned, specified and described in said Notice was and is the personal and individual property of affiant; that said property is not in any way connected with, and does not belong to the Board of State Harbor Commissioners of the State of California, or the State Belt Railroad, or the State of California, and the said Board of State Harbor Commissioners and the State of California have no interest whatsoever in or to said property.

WILLIAM A. SHERMAN.

Subscribed and sworn to before me this 8th day of June, 1929.

[Seal]

EVELYN LA FARGUE,  
Notary Public in and for the City and County of  
San Francisco, State of California.

That said affidavit was used upon the hearing of said motion and was duly introduced in evidence thereat.

That thereafter, and on or about the 17th day of June, 1929, the said motion of said defendant William A. Sherman came on regularly for hearing before the above-entitled court, Honorable A. F. St. Sure, presiding, Geo. J. Hatfield, United States Attorney, appearing as attorney for plaintiff and Leon E. Morris, Esq., appearing as attorney for defendant William A. Sherman, whereupon the following proceedings were had:

The said motion, notice of motion and affidavit of defendant William A. Sherman in support thereof, all hereinabove set forth in full, were duly read and presented to the Court and offered and received in evidence and the said motion of said defendant [20] William A. Sherman was duly made upon each and every one of the grounds set forth in said motion aforesaid.

Geo. J. Hatfield, United States Attorney, attorney for plaintiff, thereupon moved the Court that said alias execution be amended on its face by substituting the words "three hundred fifteen and 60/100" for the words "three hundred fifty and 60/100" appearing at the beginning of the next to the last paragraph of said alias execution.

That thereafter, and on or about the 26th day of June, 1929, the said Court duly made and entered its order denying the said motion of said defendant William A. Sherman, individually, for an order withdrawing, recalling and quashing the alias execution issued in the above-entitled action out of the above-entitled court on May 2, 1929, and the levy made pursuant thereto upon certain property of

said defendant, individually; that said order was and is entered in the minutes of said court in the words and figures following, to wit:

(Title of Court.)

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Wednesday, the 26th day of June, in the year of our Lord one thousand nine hundred and twenty-nine. Present: the Honorable A. F. ST. SURE, District Judge.

No. 17,612.

UNITED STATES OF AMERICA,

vs.

WILLIAM A. SHERMAN et al.

MINUTE ORDER.

The motion of the defendant, William A. Sherman, for an [21] order recalling and quashing alias execution heretofore heard and submitted, being now fully considered, IT IS ORDERED that said motion be and the same is hereby denied.

That defendant William A. Sherman duly excepted to said order.

Now, defendant William A. Sherman having presented his proposed bill of exceptions within the time allowed by law, and plaintiff having presented proposed amendments thereto, and said amendments having been incorporated in the foregoing bill of



exceptions, defendant William A. Sherman presents the foregoing as his bill of exceptions on his appeal from the said order denying the said motion, and prays that the same may be settled and allowed.

Dated: July 24, 1929.

LEON E. MORRIS,

Attorney for Defendant William A. Sherman.

[22]

STIPULATION FOR ALLOWANCE OF BILL  
OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND AGREED that the proposed bill of exceptions presented by defendant William A. Sherman, and the proposed amendments thereto, presented by plaintiff, were presented within the time allowed by law therefor and are all embodied in the foregoing bill of exceptions and that the same is a true and correct copy of the proceedings had and the documents involved in the making of the motion of said defendant William A. Sherman, individually, for an order withdrawing, recalling and quashing the alias execution issued in the above-entitled action out of the above-entitled court on May 2, 1929, and the levy made pursuant thereto upon certain property of said defendant, individually, and at the hearing of said motion, and that the same may be certified, allowed and settled, as provided by law and the practice of said Court, by the Honorable A. F. St. Sure, United States District Judge, who presided at the hearing of said motion.

Dated: July 24, 1929.

GEORGE J. HATFIELD,

United States Attorney,

By EDGAR R. BONSALE,

Assistant United States Attorney.

LEON E. MORRIS,

Attorney for Defendant William A. Sherman.

ORDER SETTLING AND ALLOWING BILL  
OF EXCEPTIONS.

I, the undersigned, Judge of the District Court of the United States, do hereby certify that the foregoing bill of exceptions, having been presented within the time allowed by law therefor, [23] is a true and correct copy of the proceedings had and the documents involved in the making of the motion of said defendant William A. Sherman, individually, for an order withdrawing, recalling and quashing the alias execution issued in the above-entitled action out of the above-entitled court on May 2, 1929, and the levy made pursuant thereto upon certain property of said defendant, individually, and at the hearing of said motion, and do hereby settle and allow the same and order that said bill of exceptions be filed with the Clerk of this court.

Dated: July 25th, 1929.

A. F. ST. SURE,

United States District Judge.

[Endorsed]: Filed July 25th, 1929. [24]

[Title of Court and Cause.]

PETITION FOR APPEAL FROM ORDER  
DENYING MOTION TO QUASH EXECU-  
TION.

William A. Sherman, one of the defendants above named, considering himself aggrieved by the order made and entered in the above-entitled action by the above-entitled court, on June 26th, 1929, which said order denied the motion of said defendant William A. Sherman, individually, for an order withdrawing, recalling and quashing the alias execution issued in the above-entitled action out of the above-entitled court on May 2, 1929, and the levy made pursuant thereto upon certain property of said defendant, individually, hereby appeals from said order to the United States Circuit Court of Appeals for the Ninth Circuit, and said defendant prays that this, his appeal to the United States Circuit Court of Appeals for the Ninth Circuit may be allowed, and that a transcript of the record, papers and proceedings upon which said order was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit.

Dated: San Francisco, California, July 1st, 1929.

LEON E. MORRIS,

Attorney for Defendant, William A. Sherman.

Due service and receipt of copy of the within

petition for appeal, etc., is hereby admitted this 1st day of July, 1929.

GEORGE J. HATFIELD,  
Attorney for Plaintiff.

[Endorsed]: Filed July 1, 1929. [25]

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[Title of Court and Cause.]

ASSIGNMENT OF ERRORS ON PETITION  
FOR APPEAL FROM ORDER DENYING  
MOTION TO QUASH EXECUTION.

Comes now William A. Sherman, one of the defendants above named and files the following assignment of errors upon which he will rely on the prosecution of his appeal in the above-entitled action from the order entered therein on the 26th day of June, 1929, denying his motion to quash execution.

I.

That said United States District Court erred in denying the motion of defendant, William A. Sherman, individually, for an order withdrawing, recalling and quashing the alias execution issued in the above-entitled action out of the above-entitled court on May 2, 1929, and the levy made pursuant thereto upon certain property of this defendant, individually.

II.

That said United States District Court erred in [26] denying the motion of defendant, William A. Sherman, individually, for an order withdraw-

ing, recalling and quashing the alias execution issued in the above-entitled action out of the above-entitled court on May 2, 1929, and the levy made pursuant thereto upon certain property of this defendant, individually, for the following reasons:

(a) That there was and is a variance between said alias execution and the levy made thereunder and the judgment in the above-entitled action, in that said judgment was and is entered against William A. Sherman, M. F. Cochrane and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad, and as such, is a judgment against said defendants in their official capacity, whereas said alias execution was and is levied upon certain property of defendant, William A. Sherman, individually.

(b) That the complaint in the above-entitled action was filed against defendants constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad and that judgment in said action was rendered against said defendants constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad; that said judgment was and is a judgment against defendant in his official capacity and the levy of execution upon the individual property of said defendant is without right and contrary to the provisions of law applicable to the levy of execution upon judgments rendered against persons in their official capacity.

(c) That the above-entitled action and the judgment therein are based upon an alleged violation

of the statutes of the United States known as "Federal Safety Appliance Act"; that the said Federal Safety Appliance Act assesses a penalty for [27] a violation thereof against a common carrier only; that this defendant is not a common carrier in his individual capacity; that the judgment in the above-entitled action could only have been rendered and can only be enforced against defendants in their official capacity and not in their individual capacity.

### III.

That the District Court erred in holding that a judgment against defendants in their official capacity could be enforced against this defendant individually and execution levied upon his individual and personal property.

WHEREFORE, defendant, William A. Sherman, prays that the order of the District Court of the United States for the Northern District of California, Southern Division hereinabove referred to, be reversed and set aside and such other and further relief as may be proper in the premises.

LEON E. MORRIS,

Attorney for Defendant, William A. Sherman.

Service and receipt of a copy of the within assignment of errors on petition for appeal from order denying motion to quash execution is hereby admitted this 1st day of July, 1929.

GEORGE J. HATFIELD,

Attorney for Plaintiff.

[Endorsed]: Filed July 1, 1929. [28]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL FROM ORDER  
DENYING MOTION TO QUASH EXECU-  
TION, AND FIXING AMOUNT OF BOND.

On motion of Leon E. Morris, attorney for defendant, William A. Sherman, IT IS ORDERED that the appeal of said defendant William A. Sherman to the United States Circuit Court of Appeals for the Ninth Circuit, from the order made and entered in the above-entitled action by the above-entitled court on June 26th, 1929, denying motion of said defendant to withdraw, recall and quash the alias execution issued in the above-entitled action out of the above-entitled court on May 2, 1929, and the levy made pursuant thereto upon certain property of said defendant, individually, be and the same is hereby allowed; and that a duly authenticated transcript of the record, papers and proceedings on which said order was made be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that said defendant file with the Clerk of this Court a good and sufficient bond in the sum of Seven Hundred and Fifty (\$750.00) Dollars, conditioned as required by law that the appellant shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good; and that said bond on appeal shall operate and constitute a supersedeas bond.

Dated: July 8th, 1929.

A. F. ST. SURE,  
United States District Judge.

[Endorsed]: Filed July 8th, 1929. [29]

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[Title of Court and Cause.]

### UNDERTAKING ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:  
That Hartford Accident and Indemnity Company, of Hartford, Connecticut, a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and duly licensed to transact business in the State of California, is firmly bound unto United States of America, plaintiff in the above-entitled cause, in the sum of Seven Hundred Fifty and no/100 (\$750.00) Dollars, to be paid unto the said United States of America, for which payment well and truly to be made, the Hartford Accident and Indemnity Company binds itself, its successors and assigns, firmly by these presents.

Signed, sealed and dated this 9th day of July, 1929.

THE CONDITION of the above obligation is such that whereas William A. Sherman, one of the defendants in the above-entitled cause, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment of the above-entitled court entered in said cause on the 26th day of June, 1929. [30]



NOW, THEREFORE, the condition of the above obligation is such that if the said William A. Sherman shall prosecute his appeal to effect and answer all damages and costs which may be adjudged if he fails to make good his plea, then this obligation shall be void; otherwise to remain in full force.

It is further stipulated as a part of the foregoing bond that in case of the breach of any condition thereof, the above-named District Court may, upon notice to the surety above named, proceed summarily in said proceedings to ascertain the amount which said Surety is bound to pay on account of such breach, and render judgment therefor against said Surety and award execution therefor.

HARTFORD ACCIDENT AND INDEMNITY COMPANY.

By A. C. POSEY, (Seal.)

Attorney-in-fact.

This bond approved as to form, amount and sufficiency of surety.

A. F. ST. SURE,  
Judge of the U. S. District Court.

[Endorsed]: Filed July 10th, 1929. [31]

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[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said Court:

Sir: Please prepare record on appeal of defendant William A. Sherman from order denying motion to quash execution, to the Circuit Court of Ap-

peals for the Ninth Circuit, in the above-entitled matter, and include therein the following papers and documents:

Complaint and summons.

Judgment.

Bill of exceptions on appeal from order denying motion to quash execution.

Petition for appeal from order denying motion to quash execution.

Assignment of errors on appeal from order denying motion to quash execution.

Order allowing appeal from order denying motion to quash execution and fixing amount of bond.

Bond on appeal from order denying motion to quash execution.

Citation on appeal from order denying motion to quash execution with admission of service.

This praecipe.

LEON E. MORRIS,

Attorney for Defendant William A. Sherman.

Service and receipt of copy of the within praecipe is hereby admitted this 25th day of July, 1929.

GEO. J. HATFIELD,

Attorney for Plaintiff.

[Endorsed]: Filed July 25th, 1929. [32]

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CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing



thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, Southern Division, wherein William A. Sherman, individually, is appellant and you are appellee, to show cause, if any there be, why the order made and entered denying the motion of said defendant William A. Sherman, individually, for an order withdrawing, recalling and quashing the alias execution issued in the above-entitled action out of the above-entitled court on May 2, 1929, and the levy made pursuant thereto upon certain property of said defendant, individually, should not be corrected, reversed and set aside, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable A. F. ST. SURE, United States District Judge for the Northern District of California, Southern Division, this 8th day of July, 1929.

A. F. ST. SURE,  
United States District Judge.

Service and receipt of a copy of the within citation is hereby admitted this 8th day of July, 1929.

GEO. J. HATFIELD,  
Attorney for Pltff.

[Endorsed]: Filed Jul. 8, 1929. Walter B. Maling, Clerk. By Harry G. Fouts, Deputy Clerk.  
[34]

[Endorsed]: No. 5904. United States Circuit Court of Appeals for the Ninth Circuit. William A. Sherman, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed August 6, 1929.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Frank H. Schmid,

Deputy Clerk.

In the District Court of the United States, for the Northern District of California, Second Division.

No. 17,612.

THE UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

WILLIAM A. SHERMAN, M. F. COCHRANE  
and J. B. SANFORD, Constituting the  
Board of State Harbor Commissioners of the  
State of California, Operating the STATE  
BELT RAILROAD,

Defendants.

PRAECIPE FOR SUPPLEMENT TO RECORD.

To the Clerk of Said Court:

Sir: Please prepare a supplement to the record on appeal of defendant William A. Sherman on order denying motion to quash execution to the Circuit Court of Appeals for the Ninth Circuit in the above-entitled matter, and include therein the following paper or document:

Motion to dismiss (entitled notice of motion to dismiss).

Said document is not a part of the judgment-roll but was filed in the above-entitled matter on the 25th day of September, 1926.

Please incorporate in your certificate accompanying said supplement to the record a certification

that said document is not a part of the judgment-roll in the above-entitled suit on file in your office.

Dated: September 26th, 1929.

LEON E. MORRIS,

Attorney for Defendant William A. Sherman.

Due service and receipt of copy of the within praecipe is hereby admitted this 26th day of September, 1929, and plaintiff hereby consents to the preparation and filing of the supplement to record referred to in said praecipe.

GEORGE J. HATFIELD,

Attorney for Plaintiff.

[Endorsed]: Filed September 30th, 1929. [1\*]

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[Title of Court and Cause.]

NOTICE OF MOTION TO DISMISS.

To the Plaintiff Herein and to GEO. J. HATFIELD, Esq., Its Attorney:

You and each of you will please take notice that the defendants herein, the Board of State Harbor Commissioners of the State of California, through its attorney, having appeared specially for the purpose of objecting to the jurisdiction of this Court, will on Monday, the 4th day of October, 1926, at the hour of ten o'clock A. M., or as soon thereafter as counsel can be heard, at the courtroom of said District Court, Second Division thereof, in the

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\*Page-number appearing at the foot of page of original certified Supplemental Transcript of Record

Post Office Building, 7th and Mission Streets, at San Francisco, California, move said court to dismiss the above-entitled action and each and every one of the three causes of action contained in the complaint on file herein on the following grounds:

I.

That said Court has no jurisdiction over said defendants.

II.

That said Court has no jurisdiction over said defendants [2] as to the matters and things set forth in said complaint because of the fact that the Constitution of the United States forbids a state being sued without its consent in any court except the Supreme Court of the United States.

III.

That said Court has no jurisdiction of the matters involved in this and each and every one of the causes of action in the said complaint contained, in that each of said actions is between the United States of America and the State of California, and that the proper place of trial is the Supreme Court of the United States.

IV.

That said Court has no jurisdiction over the defendants herein sued as the Board of State Harbor Commissioners of the State of California, a political arm or agency of the State of California, in that said defendants are merely officers of the State of California and acting as such as and for and in be-



half of the People of the State of California; and further in that each and every one of said causes of action is between the United States of America and the State of California in violation of Article III, Section 2, of the Constitution of the United States.

## V.

That said complaint is without sufficient facts to constitute a cause of action.

## VI.

That William A. Sherman, M. F. Cochrane and J. B. Sanford, as and constituting the Board of State Harbor Commissioners of the State of California, collectively as individuals or as said Board, or separately as individuals, are not amenable, while acting as such Board of State Harbor Commissioners and representing the People of the State of California, and while carrying out the laws [3] of the State of California—to any jurisdiction other than the Supreme Court of the United States, or any laws other than those of the State of California, and because of the foregoing and other reasons this action is violative of the first ten Amendments to the Constitution of the United States.

## VII.

That the State of California as a sovereign state, and as represented by said Board of State Harbor Commissioners, is immune from suits and cannot be sued without its consent in any court of the United States other than the Supreme Court of the United

States; and that said action is in violation of the Eleventh Amendment to the Constitution of the United States.

### VIII.

That it does not appear, nor can it be ascertained, from the complaint on file herein, how or in what manner, or at what times the defendants herein were operating said Belt Railroad as "common carriers engaged in interstate commerce by railroad in the State of California."

### IX.

That the State of California, as a sovereign state, is operating the said Belt Railroad by and through its Board of State Harbor Commissioners on the waterfront at San Francisco, and wholly within the boundaries of the State of California, and not in conjunction with, or under any contract with, or any agreement with, any common carrier engaged in interstate commerce.

Said motion will be made upon the grounds hereinbefore set forth.

Said motion will be based upon this notice of motion and upon all the papers, files, records and proceedings in this action to which reference is hereby made for the purpose of this motion. [4]

Dated: September 24, 1926.

W. T. PLUNKETT,

Attorney for Defendants William A. Sherman,  
M. F. Cochrane and J. B. Sanford, Constituting  
the Board of State Harbor Commissioners of  
the State of California, Operating the State  
Belt Railroad.

Receipt of copy of the within notice of motion to dismiss is hereby admitted this 25th day of September, 1926.

GEO. J. HATFIELD,  
Attorney for Plaintiff.

[Endorsed]: Filed Sept. 25th, 1926. [5]

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[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO SUPPLEMENT TO TRAN-  
SCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the District Court of the United States in and for the Northern District of California, do hereby certify the foregoing five pages numbered from one to five, inclusive, to be a full, true and correct copy of the praecipe for supplement to record and the motion to dismiss entitled notice of motion to dismiss, as enumerated in the praecipe for supplement to record on appeal as the same remain on file and of record in the above-entitled suit in the office of the Clerk of said court.

I further certify that the said document, said motion to dismiss entitled notice of motion to dismiss, is the only motion to dismiss filed in the above-entitled suit in the office of the Clerk of said court, and that said document is not a part of the judgment-roll in the above-entitled suit on file and of record therein in the office of the Clerk of said court.

